REMARKS

Applicant respectfully requests reconsideration of this application as amended.

Claims 1, 16 and 19-27 have been amended to present the claims in better form for

allowance and for possible consideration on appeal and in response to the Examiner's

rejections under 35 U.S.C 101 and 112. Applicant respectfully requests the Examiner to

accept the proposed amendments. Claims 4, 6-15, 17-18 and 28-30 have been cancelled

without prejudice. No new claims have been added. Therefore, claims 1-3, 5, 16 and 19-

27 are presented for examination.

35 U.S.C. 101 Rejection

Claims 16 and 24 are rejected under 35 U.S.C. 101, because the claimed invention

is directed to non-statutory subject matter.

Claims 16 and 24 have been amended. Accordingly, Applicants respectfully

request the withdrawal of the rejection of claims 16 and 24 and their dependent claims.

35 U.S.C. § 112 Rejection

Claims 1, 16 and 24 stand rejected under 35 U.S.C. §112, second paragraph, as

being indefinite for failing for particularly point out and distinctly claim the subject

matter which applicant regards as the invention.

Claims 1, 16 and 24 have been amended. Accordingly, Applicants respectfully

request the withdrawal of the rejection of claims 1, 16 and 24 and their dependent claims.

35 U.S.C. § 103 Rejection

Claims 1-3, 5, 16, and 19-27 stand rejected under 35 U.S.C. §103(a) as being

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unpatentable over Bookman, U.S. Application No. 2003/0050929 ("Bookman") in view

of Alessi, et al., U.S. Patent No. 7,058,027 ("Alessi") and further in view of Ellis, U.S.

Application No. 2004/0117831 ("Ellis").

Claim 1, as amended, recites:

A method comprising:
receiving content from one or more content sources;
distributing a metadata dictionary to a plurality of network nodes, wherein
      the metadata dictionary comprises content descriptors;
receiving subscription information from the plurality of network nodes;
matching the content and the subscription information to form an
      aggregate content bit for the plurality of network nodes;
creating a rating survey via the subscription information, the rating survey
      to maximize allocation of bandwidth, the rating survey including
      user data, the user data including one or more of user interest level
      relating to the content, user timing preference relating to one or
      more of receiving of the content and consuming of the content, and
      observational profile information including one or more of
      automated observation and user-contributed observation;
allocating the bandwidth according to the rating survey;
generating an aggregated content stream based on the allocated bandwidth,
      wherein the aggregated content stream comprises aggregated
      content; and
distributing the aggregated content stream to a plurality of filtering
      network nodes, wherein the aggregated content stream is filtered
      via filtering hubs located at the plurality of filtering network nodes.
(emphasis added)

Applicants disagree with the Examiner's characterization of the references and the

pending claims. For example, claim 1, in pertinent part, recites "allocating the bandwidth

according to the rating survey" (emphasis added) and Examiner relies on Alessi for said

feature of claim 1 (see page 8, Office Action, mailed 03-17-08). Specifically, the

Examiner relies on col. 5, lines 44-49 and the Abstract of Alessi. Alessi discloses "[d]ata

from the transmitting end point may be sent to an optional rate converter. The rate

converter allows available link-bandwidth to be allocated efficiently. More particularly,

available bit rate ("ABR") or other calls are allocated available link-bandwidth

according to a weight-based priority scheme. The rate converter assigns each connection a weight factor in accordance with the connection's priority." (col. 5, lines 44-49; emphasis added).

Alessi further discloses a "*protocol-independent error-control system includes several components (840a, 830a, 820a, 150b, 820b, 830b, 840b) that assist in providing more reliable data transmission between endpoints* (110, 120): 1) an ATM adaptation layer that supports quality-critical and time-critical data; 2) a rate converter that uses a priority scheme to adjust the data rate for different types of data; and 3) an error-control subsystem that implements a data link protocol optimized for error-prone links, and capable of recognizing traffic from many kinds of network sources. The error-control subsystem may be used alone or in combination with the ATM adaptation layer (170, 172, 180, 182) and/or the rate converter (830)." (Abstract; emphasis added).

Applicants respectfully submit that Alessi's *rate converter that relies on a weight-based priority scheme* and the *protocol-independent error-control system that includes several components that assist in providing more reliable data transmission between endpoints* is **not the same as and has nothing to do with** "allocating the bandwidth according to the rating survey" as recited by claim 1. Hence, Alessi does not make up for the deficiencies of Bookman and Ellis.

Claim 1, in pertinent part, further recites "matching the content and the subscription information to form an aggregate content bit for the plurality of network nodes; creating a rating survey via the subscription information, the rating survey to maximize allocation of bandwidth, the rating survey including user data, the user data including one or more of user interest level relating to the content, user timing preference relating to one or more of receiving of the content and consuming of the content, and

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observational profile information including one or more of automated observation and user-contributed observation". (emphasis added). The Examiner relies on Ellis for said features of claim 1; more specifically, the Examiner relies on paragraphs 0129, 0201, 0128, 0096 of Ellis. (see pages 6-7, Office Action, mailed 03-17-08).

Referring now to paragraph 0129 relied upon by the Examiner, Ellis discloses "[p]rogram Information screen 150 also includes a set of options (such as options 151, 152, and 153) related to the program. The set of options available will depend on the program itself and how it was selected. The user can scroll through the options using the LEFT and RIGHT Arrow keys on the remote control. If a large number of options are available, the guide may present them in a nested menu . . . ." (paragraph 0129; emphasis added). The *program information screen* of Ellis is **not the same as and has nothing to do with** "matching the content and the subscription information to form an aggregate content bit for the plurality of network nodes" as recited by claim 1 (emphasis added).

Similarly, Ellis does not teach or reasonably suggest "creating a rating survey via the subscription information, the rating survey to maximize allocation of bandwidth, the rating survey including user data, the user data including one or more of user interest level relating to the content, user timing preference relating to one or more of receiving of the content and consuming of the content, and observational profile information including one or more of automated observation and user-contributed observation" as recited by claim 1 (emphasis added).

For example, paragraphs P0096 and P0128 (relied upon by the Examiner for this feature) merely disclose *"[d]edicated digital or analog channels, or at least an allocated portion of the available bandwidth in communications paths 24, may be used for the transmission of certain types of data (e.g., video-on-demand programs, chat messages,*

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etc.). Such dedicated channels may be separate from the channels used for transmitting

television program broadcast signals to the user television equipment . . . *If a program is*

selected, for example from listing screen 140 of FIG. 6 or from an interactive

advertisement (e.g., 104A-C), the program guide may display, for example, Program

Information screen 150, such as shown in FIG. 7. This screen may include the name of

the program (possibly editorially shorted to fit into the screen space available), the rating

of the program, the start time and run time of the program, the channel on which the

program is being shown, and other details about the program, such as the price and

package information. Screen 150 may also display the full title of the program (in the

case that the title was editorially shortened), the year the movie was released, and a

description of the movie in region 155 . . . The data displayed in screen 150 relating to

the selected program may be obtained from a video-on-demand server, from program

guide database 14, or from the television distribution facility." (paragraphs 0096, 0128;

emphasis added).

Once again, as with the previous features of claim 1, the dedicated digital or

analog channels and the program information screen of Ellis is **not the same as and has**

nothing to do with "creating a rating survey via the subscription information, the rating

survey to maximize allocation of bandwidth, the rating survey including user data, the

user data including one or more of user interest level relating to the content, user timing

preference relating to one or more of receiving of the content and consuming of the

content, and observational profile information including one or more of automated

observation and user-contributed observation" as recited by claim 1 (emphasis added).

Hence, Ellis does not make up for any of the deficiencies of Bookman and Alessi.

Furthermore, according to MPEP §2143, "[T]he Supreme Court in *KSR*

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identified a number of rationales to support a conclusion of obviousness which are

consistent with the proper "functional approach" to the determination of obviousness as

laid down in *Graham*." And, according to MPEP §2143.01, [o]bviousness can be

established by combining or modifying the teachings of the prior art to produce the

claimed invention where there is some teaching, suggestion, or motivation to do so. *In re*

Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). Further, "[t]he mere

fact that references <u>can</u> be combined or modified does not render the resultant

combination obvious unless the results would have been predictable to one of ordinary

skill in the art." *KSR International Co. v. Teleflex, Inc.* 550 U.S. ___, ___, 82 USPQ2d

1385, 1396 (2007).

<u>Bookman</u>, <u>Alessi</u> and <u>Ellis</u>, neither individually nor when combined in

combination, teach or reasonably suggest all the features of claim 1 and a *prima facie*

case of obviousness has not been met under MPEP §2142. Accordingly, Applicant

respectfully requests the withdrawal of the rejection of claim 1 and its dependent claims.

Claims 16 and 24 contain limitations similar to those of claim 1. Accordingly,

Applicant respectfully requests the withdrawal of the rejection of claims 16 and 24 and

their dependent claims.

Conclusion

In light of the foregoing, reconsideration and allowance of the claims is hereby

earnestly requested.

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Invitation for a Telephone Interview

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

Request for an Extension of Time

Applicant respectfully petitions for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.

Charge our Deposit Account

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

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